

BILL ANALYSIS

C.S.S.B. 1838
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that there are inconsistencies in the application of current law governing fee schedules for court-appointed attorneys in child protection cases, as well as a lack of clarity regarding how these schedules should apply to attorneys representing children and indigent parents in child protection cases. The bill sponsor has also informed the committee that references to statutes primarily addressing criminal defense have further contributed to confusion, leading to disparities in compensation and, in some cases, the absence of a standardized fee schedule altogether. C.S.S.B. 1838 seeks to address this issue by clarifying and standardizing the rules surrounding fee schedules for attorneys appointed to represent children and indigent parents in Department of Family and Protective Services cases.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1838 amends the Family Code to change the suit applicable to the requirement for a court to appoint an attorney ad litem to represent the interests of certain parents or alleged fathers from a child protection suit filed by a governmental entity in which termination of the parent-child relationship or the appointment of a conservator for a child is requested to a suit affecting the parent-child relationship filed by a governmental entity in which such actions are requested.

C.S.S.B. 1838 entitles an attorney appointed in a child protection suit filed by a governmental entity to serve as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent, to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.

C.S.S.B. 1838, with respect to the requirement for payment of an attorney ad litem appointed to represent a child or parent in a suit affecting the parent-child relationship filed by a governmental entity from the general funds of the county according to a specified fee schedule if indigency of the parents is shown, makes the following changes:

- clarifies that the attorney ad litem required to be paid from such funds is an attorney ad litem who is not an employee of an office of child representation, office of parent representation, or other entity that uses public money to provide legal representation to children or parents in a suit filed by a governmental entity; and

- replaces the fee schedule according to which the attorney ad litem must be paid from the fee schedule that applies to an attorney appointed to represent a child in a suit under the juvenile justice code to the fee schedule adopted under the bill's provisions.

These provisions apply only to an attorney ad litem appointed on or after January 1, 2026.

C.S.S.B. 1838 authorizes a court to remove a person from the list maintained by the court of persons qualified for appointment as an attorney or guardian ad litem in a suit affecting the parent-child relationship if, after notice and a hearing, the court determines the person submitted a voucher or claim for payment for services the person did not perform. The bill authorizes a person whose voucher or claim for payment was denied or modified by the court or has not been approved by the court by the 60th day after the date the voucher or claim for payment was submitted to file a petition addressed to the presiding judge of the administrative judicial region to compel payment or to appeal the denial or modification of the payment. The bill requires the presiding judge to review the petition for payment, to determine the amount due to the petitioner, and to order the commissioners court to pay that amount not later than the 45th day after the date a petition is filed. The bill authorizes the presiding judge to hold a hearing in such a proceeding.

C.S.S.B. 1838 requires each court in a county hearing suits affecting the parent-child relationship filed by a governmental entity to jointly develop, adopt, and submit to the commissioners court of the county a fee schedule for the compensation of an applicable attorney ad litem appointed to represent a child or parent in such a suit where the indigency of the parents is shown, that includes the following:

- payments for time spent in court making an appearance on behalf of the parent or child in the case, including in an appellate court, and reasonable and necessary time spent out of court on the case, including in the preparation of an appeal; and
- reimbursement for reasonable and necessary expenses, including mileage and other case-related travel expenses and costs for expert witnesses.

The adopted fee schedule must do the following:

- describe with specificity services and expenses eligible for payment or reimbursement;
- include an hourly or fixed payment rate based on:
 - reasonable and necessary time spent on a case;
 - reasonable and necessary overhead costs associated with a case; and
 - the availability of qualified attorneys willing to serve at the rate; and
- include a form for the itemization of services and expenses for a voucher or claim for payment required under state law.

These provisions relating to the fee schedule apply only to an attorney ad litem appointed on or after January 1, 2026.

C.S.S.B. 1838 requires the courts in each county hearing suits affecting the parent-child relationship filed by a governmental entity in which appointment of an attorney ad litem is required for a child protection suit or required under statutory provisions relating to special appointments, child custody evaluations, and adoption evaluations to adopt, not later than January 1, 2026, the fee schedule required under the bill's provisions.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1838 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision absent from the engrossed specifying that the reimbursement for reasonable and necessary expenses under the fee schedule for the compensation of an applicable attorney ad litem appointed to represent a child or parent in a suit affecting the parent-child relationship filed by a governmental entity in which indigency of the parents is shown includes reimbursement for mileage and other case-related travel expenses and costs for expert witnesses.